

Appl. No. 09/914,526
Atty. Docket No. 7472
Amdt. dated 10/03/03
Reply to Office Action of 12/10/2003
Customer No. 27752

REMARKS/ARGUMENTS

Claims 1-14 remain pending in the application. Claims 1 and 14 have been amended to use U.S.-style "comprising" language. Claim 1 recites that the core is an agglomerate. Basis is at page 4, line 26 (referring to WO 00/53719). Claim 1 has been further amended to recite that the surface of the core agglomerate has irregularities and crevices. Basis is at page 10, lines 14-20. Claims 5 and 9 have been amended to meet formal objections, as discussed below. Claim 14 has been amended to depend from Claim 1. It is submitted that these amendments add no new matter, and entry is requested.

Claim Objections

Claim 5 has been amended to meet the objection at page 2 of the Office Action. Withdrawal of the objection is requested.

Rejection Under 35 USC 112

Claim 9 stands rejected, for reasons of record at page 2 of the Office Action. The claim has been amended in the manner suggested by the Examiner. The Examiner's assistance in this regard is acknowledged. In view of the amendment, withdrawal of the rejection is requested.

Rejections Under §§102 or 103

Claims 1-5, 8 and 12-14 stand rejected under §102 as anticipated by, or, in the alternative, under §103 as obvious over 4,105,827, for reasons of record at pages 3-4 of the Office Action.

Claims 1-5, 8 and 12-14 also stand rejected under §102 as anticipated by, or, in the alternative, under §103 as obvious over U.S. EP 0,651,053, for reasons of record at pages 4-5 of the Office Action.

Claims 1-3, 6-7, 9 and 12-13 also stand rejected under §102 as anticipated by, or, in the alternative, under §103 as obvious over EP 0,057,611, for reasons of record at page 5 of the Office Action.

Each of these three grounds of rejection importantly rely on the doctrine of inherency. With regard to the rejection over '827, the Office Action states, "Even though ['827] does not explicitly disclose...it would be inherent...." (O.A., page 4) With regard to the rejection over '053, the Office Action states, "Even though ['053] does not explicitly disclose... it would be inherent...." (O.A., page 5) With regard to the rejection over '611, the Office Action states, "Even though ['611] does not explicitly disclose...it would be inherent...." (O.A., page 5)

Applicants respectfully traverse all rejections.

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Before turning to the substance of the rejections, attention is directed to the Board's decision in *Ex parte Schricker*, 56 USPQ2d 1723 (BPAI 2000).

With regard to the current inherency rejections being under §102 or §103, the Board addresses this specific point at page 1725 [1]. The Board notes:

Inherency and obviousness are somewhat like oil and water – they do not mix well.

As stated by the Board at p. 1725, five lines earlier, inherency, "...is really an anticipation rationale...." Accordingly, it is respectfully submitted that §103 is not a proper grounds for the inherency rejections in the instant case. Withdrawal of the rejections on the basis of §103 is requested.

Furthermore, the Board additionally notes at p. 1725 [1]:

However, when an examiner relies on inherency, it is incumbent on the examiner to point to the "page and line" of the prior art which justifies an inherency theory.

In this regard, the relevant case law also requires that:

Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999)

Moreover, it is improper to establish prior invention when there is an absence of evidence that the alleged prior inventors appreciated at the time of their work all the elements of the invention. *Schering Corp. v. Precision – Cosmet Co. Inc.*, 614 F. Supp. 1368, 227 USPQ 278 (D. Del. 1985). It is submitted that none of the cited documents appears to appreciate the defining elements of the present invention.

Turning to the teachings of '827, one finds a method for stabilizing particulate peroxygen compounds, which can be percarbonate granules. (Col. 3, l. 33.) However, nothing therein teaches or suggests that the peroxygen compounds are in the form of agglomerates, in the manner of the present invention.

As disclosed herein at page 11, first paragraph, the core agglomerates used in the present process have irregularities and crevices. The invention serves to smooth the irregularities and fill the crevices, thereby smoothing the core agglomerates and reducing their surface area.

It is submitted that nothing in '827 relates to coating agglomerates to fill crevices and to smooth irregularities. Indeed, nothing in '827 suggests the presence of crevices/irregularities on the disclosed "granules." Therefore, in light of the cases law cited above, it is submitted that

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inherency has not been established in the present circumstances. Reconsideration and withdrawal of the rejections on this basis are requested.


In regard to '053, the same arguments apply. Patentees disclose coatings for percarbonate bleaches. Sodium percarbonate is taught to be a crystalline solid. (Page 3, l. 25) Nothing in '053 suggests that such percarbonate would have surface irregularities and crevices that would, or could, be filled by a coating. Certainly, nothing therein teaches or suggests that the coating would reduce the surface area of any solids, much less a crystalline solid. Therefore, it is submitted that inherency has not been established. Reconsideration and withdrawal of the rejections on this basis are requested.

Likewise, in regard to EP '611, the same arguments hold true. EP '611 encompasses a coating process for spray-dried or spray-cooled soap particles. Nothing therein suggests that the soap particles have crevices or irregularities that could, or should, be filled, thereby reducing their surface area. Again, it is submitted that inherency has not been established, so reconsideration and withdrawal of the rejections on this basis are requested.

In summary, it is submitted that nothing in the disclosures of the cited documents would lead one of skill in the art to conclude that a finished product having the definitional parameters specified herein would necessarily (*Robertson*) be produced. Accordingly, it is submitted that rejections based on inherency cannot stand.

In light of the above amendments and remarks, it is requested that the Examiner reconsider and withdraw all rejections. Early and favorable action in the case is requested.

Respectfully submitted,
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